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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:

No. 09-06194-PCW11

LLS AMERICA, LLC,

CV-12-664-RMP

Debtor.

BRUCE P. KRIEGMAN, solely in his
capacity as court-appointed Chapter 11
Trustee for LLS America LLC,

Adversary No. _____

Plaintiff,

ADVERSARY COMPLAINT FOR
AVOIDANCE OF TRANSFERS AND
OTHER RELIEF

v.

DAVID PERRY and
OTHELIA SPARE,

Defendants.

ADVERSARY COMPLAINT - 1

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Attorneys & Counselors

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COMES NOW Plaintiff, BRUCE P. KRIEGMAN, solely in his capacity as the court-appointed Chapter 11 Trustee for LLS America, LLC (hereinafter sometimes "Trustee"), and for causes of action against the above-named Defendants, complains and alleges as follows.

I. JURISDICTION

1. The Debtor, LLS America LLC, filed a voluntary petition under Chapter 11 of the US Bankruptcy Code (the "Code") on July 21, 2009 in the Bankruptcy Court of the District of Nevada (the "Petition Filing Date"). Venue in this matter was transferred to the Bankruptcy Court for the Eastern District of Washington by order dated November 4, 2009.

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334(b) and alternatively under 28 U.S.C. § 157(c). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(H) and (O).

3. The fraudulent and/or preferential transfers described herein include transfers of funds to and from bank accounts located in the United States by the Debtor and related companies conducting business in the United States, and Defendants are subject to the jurisdiction of this Court as a result of the same. Jurisdiction over Defendant David Perry is also based in part upon a proof of claim which such Defendant filed in Debtor's case. By filing said proof of claim,

ADVERSARY COMPLAINT - 2

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1 the Defendant David Perry, in accordance with applicable law, consented to the
2 Court's jurisdiction.
3

4 II. DESCRIPTION OF PARTIES

5 4. Plaintiff, Bruce P. Kriegman, was appointed as trustee for the Debtor
6 (hereinafter "LLS America") by order of the Court entered on April 21, 2011. He
7 files this action solely in his capacity as trustee.
8

9 5. Defendants are transferees of fraudulent and/or preferential transfers
10 made by LLS America and/or companies related thereto (the "LLS America
11 Companies" as hereinafter defined). The Defendants, as described in more detail
12 below, were so-called "lenders" to LLS America or the LLS America Companies.
13
14

15 III. FACTS RELATING TO OPERATION OF LLS AMERICA

16 6. LLS America was controlled, at all times relevant hereto, by Doris
17 Nelson ("Nelson"), who was the sole member of LLS America. Nelson also
18 established other companies (the LLS America Companies identified below) that
19 she purportedly used, in addition to LLS America, for operation of a business to
20 make loans under a principal amount of about \$1,000.00 to individual customers
21 (hereinafter the "Customer Loans"). Nelson managed the LLS America
22 Companies, some of which date as far back as about 1999, in a manner such that
23 they and, later LLS America, were operated as a single business enterprise. She
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ADVERSARY COMPLAINT - 3

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1 indiscriminately used the funds and resources of the companies interchangeably to
2 suit varying purposes. Many of the companies for the most part were later rolled
3 into LLS America and LLS America is effectively the successor in interest
4 thereof.
5

6
7 7. LLS America began providing Customer Loans on the internet in
8 approximately 2006.

9
10 8. The entities referenced herein as "LLS America Companies" include
11 Little Loan Shoppe Canada LLC (originally named LLS Ltd.), Little Loan Shoppe
12 America LLC, Little Loan Shoppe Ltd., 360 Northwest Networks LLC, LLS
13 America LLC, LLS Canada LLC, Team Spirit America LLC ("TSA"), 0738126
14 BC Ltd., 0738116 BC Ltd., 0738106 BC Ltd., D&D Associates LLC ("D&D"),
15 and D&C Lead Marketing Associates LLC ("D&C") and its wholly-owned
16 subsidiary, Global Edge Marketing LLC, doing business as Adworkz doing
17 business as Adworkz, Inc. ("GEM"). Some of these entities may also
18 occasionally have operated under different names. All of the LLS America
19 Companies were actually or effectively controlled by Nelson, who was or is the
20 sole member of each, with the exception of D&D, which is solely ostensibly
21 owned by Nelson's husband, Dennis Nelson, and D&C, which is ostensibly owned
22 94% by Dennis Nelson and Nelson's son, Alex Foster. D&D owns the building in
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ADVERSARY COMPLAINT - 4

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1 which the Customer Loan business operates and D&C, GEM and Adworkz, Inc.
2 are involved in generating leads for the Customer Loan business.
3

4 IV. PONZI SCHEME

5 9. In the several years prior to the Petition Filing Date, LLS America
6 and/or the LLS America Companies solicited and received significant sums of
7 money from hundreds of parties, who were called “Lenders”, representing that the
8 money would be invested in the Customer Loan business.
9
10

11 10. The vast majority of the money which Nelson, LLS America or the
12 LLS America Companies paid back to Lenders in relation to their “investments”
13 was from the funds LLS America and/or the LLS America Companies received
14 from subsequent Lenders and not out of operations or profits of the Customer
15 Loan business which LLS America and the LLS America Companies operated.¹
16
17 The Customer Loan business was insolvent and did not operate profitably during
18 the time period the fraudulent transfers described herein were made. A vehicle
19 for funneling money from Lenders into LLS America and/or LLS America
20 Companies was use of promissory notes (described in more detail below).² A
21 significant amount of the funds received from Lenders through the pretext of the
22
23
24

25
26 ¹ Some of the funds, on information and belief, on occasion were used in operation of the
Customer Loan business.

27 ² Copies of the notes are attached to a significant number of proofs of claim filed with the Court
28 in the LLS America case.



1 notes were diverted to Nelson or her family members for personal use or used to
2 subsidize business ventures of her and/or her family. This was a fraudulent
3 arrangement by which the LLS Companies and LLS America made payments to
4 investors (i.e., Lenders) from monies obtain from later investors, while
5 maintaining the guise of a legitimate profit making business, and constituted a
6 Ponzi scheme as defined under applicable law.
7
8

9
10 11. On March 15, 2010, the Bankruptcy Court approved the appointment
11 of Charles B. Hall as Examiner in the LLS America case. The Examiner
12 expended countless hours reviewing records of LLS America and the LLS
13 America Companies and investigating a broad range of matters as directed by the
14 Court. The Examiner prepared three reports to date which are on file with the
15 Court: a Preliminary Report on May 18, 2010 (Dkt. 182), First Interim Report of
16 Examiner filed on August 12, 2010 (Dkt. 240), and Second Interim Report of
17 Examiner filed on February 28, 2011 (Dkt. 306). In the Second Interim Report,
18 the Examiner concluded as follows:
19
20
21

22 A. Neither LLS America nor its affiliates and
23 predecessor Companies were profitable prior to 2009,
24 and the operation of these businesses did not earn any
25 profits from which to pay the interest promised Lenders
26 who loaned money to the companies.

27 B. The money paid out as interest or loan principal to
28 the Lenders who loaned their money to LLS America and



its affiliates and predecessor Companies all came from the funds the Lenders loaned to the Companies.

12. Many of the promissory notes executed in favor of Lenders by LLS America and the LLS America Companies promised returns in the range of 40-60%. Some Lenders to the companies received returns in excess of 100%. However, approximately half of the Lenders to the LLS America and LLS America Companies have not received back from the companies all principal invested, and approximately 50 Lenders have received nothing.

13. The promissory notes executed in favor of many of the Lenders provide that the money received could be used by any of the LLS America Companies and that all of the affiliated LLS America Companies were liable for repayment of the Notes. It was common for Lenders to provide funds to one LLS America Company and for them to receive payment on their investment from a completely different LLS America Company.

V. INVOLVEMENT OF DEFENDANTS IN PONZI SCHEME

14. All of the Defendants were Lenders to LLS America and/or the LLS America Companies and received payments from LLS America and the LLS America Companies under the "loan" or investment arrangement described herein.



1 15. Within the 90 days prior to the Petition Filing Date, Defendants
2 received approximately \$30,000 from LLS America and/or LLS America
3 Companies as payment for an antecedent debt arising from funds previously
4 loaned LLS America and/or LLS America Companies by David Perry and/or
5 Othelia Spare.
6

7
8 16. Within four years prior to the Petition Filing Date, Defendants
9 received from LLS America and/or the LLS America Companies approximately
10 \$220,000, inclusive of the approximately \$30,000 referred to in paragraph 15
11 herein.
12

13
14 17. On information and belief, each of the Defendants knew, or should
15 have known, that because of, among other things, the exorbitant returns promised
16 to them, there was a scheme whereby the so-called “loans” were being paid with
17 funds received from other Lenders (i.e., that the arrangement was a Ponzi scheme)
18 and could not be derived from operation of the Customer Loan business or any
19 other legitimate profit-making enterprise.
20
21

22 18. LLS America and/or LLS America Companies received less than a
23 reasonable equivalent value in exchange for the transfers. The transfers by LLS
24 America and/or LLS America Companies to Defendants were made at a time
25 when LLS America and the LLS America Companies were insolvent, and/or were
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engaged in a business or a transaction, or were about to engage in a business or a transaction, for which any property remaining at LLS America and LLS America Companies was an unreasonably small capital; and/or intended to incur, or believed that they would incur, debts that would be beyond the ability of LLS America and LLS America Companies to pay as such debts became due or matured.

19. The transfers to Defendants were made with actual intent to hinder, delay or defraud creditors of LLS America and/or LLS America Companies.

20. Defendant David Perry has filed Proof of Claim No. 88 in the LLS America bankruptcy.

21. The Trustee's claims concerning fraudulent transfers, as alleged in more detail below, are brought pursuant to Sections 544 and 548 of the Code, and Chapter 19.40 of the Revised Code of Washington and concerning preferential transfers pursuant to Section 547 of the Code. The liability of the Defendants concerning the avoided transfers is based on Section 550 of the Code and the preservation of the transfers sought to be avoided arises under Section 551 of the Code.



VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

**AVOIDABLE PREFERENCES WITHIN 90 DAYS
OF PETITION FILING DATE**

22. Plaintiff reiterates each and every one of the preceding paragraphs with the same force and effect as if set forth at this point verbatim.

23. Within 90 days of the Petition Filing Date, Defendants were paid approximately \$30,000 in two installments of approximately \$15,000 each by LLS America and/or LLS America Companies on account of an antecedent debt owed by LLS America and/or LLS America Companies before such payments were made.

24. Said payments were made, upon information and belief, while LLS America and LLS America Companies were insolvent.

25. Each of the payments enables the Defendants to receive more than they would receive if the case were a case under Chapter 7; the transfer had not been made; and Defendants received payment of such debt to the extent provided by the provisions of Chapter 7 of the Bankruptcy Code.

26. Pursuant to Section 547(b) of the Code, each of these payments constitutes an avoidable preference.



SECOND CAUSE OF ACTION

**FRAUDULENT TRANSFERS MADE WITHIN FOUR
YEARS OF PETITION FILING DATE
ACTUAL AND CONSTRUCTIVE FRAUD**

27. Plaintiff reiterates each and every one of the preceding paragraphs with the same force and effect as if set forth at this point verbatim.

28. Plaintiff Trustee did not learn of the fraudulent transfers by Defendants, nor could he reasonably have learned of the same, any sooner than the date of his appointment on April 21, 2011.

29. LLS America and/or LLS America Companies, on information and belief, were insolvent at the time of each of the transfers, as that term is defined in RCW 19.40.021

30. Within four years prior to the Petition Filing Date, Defendants received transfers from LLS America and/or LLS America Companies.

30.1 Each of the transfers to Defendants, on information and belief, were made by LLS America and/or LLS America Companies with actual intent to hinder, delay or defraud creditors of LLS America and/or LLS America Companies. The facts regarding the fraudulent arrangement described above herein which constitute a Ponzi scheme evinces and establishes such actual intent; and/or



1 30.2 As to such transfers, LLS America received less than a
2 reasonably equivalent value in exchange for the transfers and was insolvent on the
3 date such transfers were made or became insolvent as a result of said transfers;
4 and/or were engaged in business or a transaction, or were about to engage in
5 business or a transaction, for which any property remaining with them was an
6 unreasonably small capital; and/or intended to incur, or believed that they would
7 incur, debts that would be beyond their ability to pay as such debts matured.
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11 31. Plaintiff Trustee is entitled to recover, for the benefit of the
12 bankruptcy estate, said fraudulent transfers, pursuant to the provisions of Section
13 548(a) and/or (b) of the Code (as to transfers within two years of the Petition
14 Filing Date) and RCW 19.40.041(1) and/or (2).
15
16

17 32. The amount concerning which recovery is sought as to the
18 Defendants pursuant to this Second Cause of Action is not less than
19 approximately: \$220,000.
20

21 **THIRD CAUSE OF ACTION**

22 **DISALLOWANCE OF CLAIM**

23
24 33. Plaintiff reiterates each and every one of the preceding paragraphs
25 with the same force and effect as if set forth at this point verbatim.
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1 34. Defendant David Perry has filed a proof of claim in this matter under
2 Claim No. 88.
3

4 35. The proof of claim has not yet been determined.

5 36. Said claim should not be allowed pursuant to Section 502(D) of the
6 Code because Defendant David Perry is the transferee of transfers of property of
7 LLS America and/or LLS America Companies which are avoidable and
8 recoverable under Sections 544, 548 or 550 of the Code and RCW Chapter 19.40
9 as set forth above, and said Defendant has not returned such avoidable transfers to
10 the Trustee.
11
12

13
14 37. As a result of the foregoing, the Trustee is entitled to an order
15 disallowing the claim of the Defendant David Perry.
16

17 **FOURTH CAUSE OF ACTION**

18 **EQUITABLE SUBORDINATION**

19 38. Plaintiff reiterates each and every one of the preceding paragraphs
20 with the same force and effect as if set forth at this point verbatim.
21

22 39. The Court should exercise the full extent of its equitable powers to
23 ensure that claims, payments or benefits, of whatever kind or nature, which are
24 asserted or sought by the Defendants, directly or indirectly against the bankruptcy
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1 estate, and only to the extent such claims are allowed, are subordinated for
2 distribution purposes pursuant to Sections 510(c)(1) and 105(a) of the Code.
3

4 40. Equitable subordination as requested herein is consistent with the
5 provisions and purposes of the Code.
6

7 **FIFTH CAUSE OF ACTION**

8 **UNJUST ENRICHMENT AND RESTITUTION**

9
10 41. Plaintiff reiterates each and every one of the preceding paragraphs
11 with the same force and effect as if set forth at this point verbatim.

12 42. The payment by LLS America and/or LLS America Companies of
13 the transfers described herein was made at a time when said companies were
14 insolvent, undercapitalized, or in the zone of insolvency. Under such
15 circumstances, retention of the transfers would constitute unjust enrichment and
16 Plaintiff and the LLS America estate are entitled to restitution of the full amount
17 of said transfers as to each Defendant, plus interest.
18
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20

21 **V. AMENDMENT**

22 43. Plaintiff reserve the right to amend this complaint as further
23 information or evidence becomes available through discovery or otherwise.
24

25 WHEREFORE, Plaintiff Trustee respectfully requests that this Court enter
26 judgment in favor of the Plaintiff Trustee and against Defendants, as follows:
27
28



1 (i) On the First Cause of Action against the Defendants, pursuant to
2 Section 547(b) of the Code: (a) avoiding and preserving the preferential transfers
3 made to Defendants within 90 days of the Petition Filing Date and (b) directing
4 that these transfers be set aside; and (c) recovering these transfers, or the value
5 thereof, from the Defendants for the benefit of the estate of LLS America.
6

7
8 (ii) On the Second Cause of Action against the Defendants, pursuant to
9 Sections 548(a) and/or (b) (as to transfers made within four years of the Petition
10 Filing Date), 550 and 551 of the Code (as applicable) and RCW 19.40.041(1)
11 and/or (2): (a) avoiding and preserving the fraudulent transfers made to the
12 Defendants within four years prior to the Petition Filing Date; (b) directing that
13 these transfers be set aside; and (c) recovering these transfers, or the value
14 thereof, from the Defendants for the benefit of the estate of LLS America;
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18 (iii) On the Third Cause of Action against Defendant David Perry, that
19 the claim of Defendant David Perry be disallowed pursuant to Section 502(d) of
20 the Code unless and until the preferential transfers and fraudulent transfers
21 described herein are returned;
22

23
24 (iv) On the Fourth Cause of Action against the Defendants, for
25 subordination of all proofs of claim of the Defendants which have been filed or
26 brought or which may hereafter be filed or brought by, on behalf of, or for the
27
28



benefit of the Defendants or their affiliated entities, against the Debtor's estate, in this bankruptcy or related bankruptcy proceedings, pursuant to Sections 510(c)(1) and 105(a) of the Code;

(v) On the Fifth Cause of Action against the Defendants, as to all transfers to Defendants, recovery of these transfers, or the value thereof, from the Defendants for the benefit of the estate;

(vi) On all claims for relief, pursuant to Federal Common Law and RCW Chapter 19.40, awarding the Plaintiff Trustee pre-judgment interest from the date on which the fraudulent and/or preferential transfers described herein were received;

(vii) On all claims for relief, establishment of a constructive trust over the proceeds of all transfers in favor of the Trustee for the benefit of the estate of LLS America;

(viii) Awarding Plaintiff Trustee all applicable interest, costs and disbursements of this action;

(ix) Awarding reasonable attorneys' fees; and



1 (x) Granting the Trustee such other, further and different relief as the
2 Court deems just, proper and equitable in the premises.
3

4 DATED this 15th day of July, 2011.

5 WITHERSPOON KELLEY
6

7 By: s/ Shelley N. Ripley

8 Duane M. Swinton, WSBA No. 8354
9 Michael D. Currin, WSBA No. 14603
10 Shelley N. Ripley, WSBA No. 28901
11 Daniel J. Gibbons, WSBA No. 33036
12 Attorneys for Plaintiff
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ADVERSARY COMPLAINT - 17

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